

Court declaring that the Attorney General has exceeded his legal authority and that the decision to enter into the Asset Purchase Agreement may be reviewed under Missouri law only to the extent such decision was improperly affected by conflicts of interest, would improperly result in a sale at less than fair market value or would violate the business judgment rule, as well as such other relief as the Court deems just and proper.

COUNT II
DECLARATORY JUDGMENT
(Reasonable Price)

48. Health Midwest restates and realleges the allegations set forth in Paragraphs 1-47 of the Petition as if restated in the following paragraphs word for word.

49. The Board engaged Ponder, a financial advisor specializing in health care transactions, to determine the market value of the Health Midwest Assets.

50. Following exhaustive review and evaluation, Ponder properly employed two generally accepted valuation methods to determine the market value of the Health Midwest Assets, concluding that the likely value of the assets was between \$533 million and \$943 million based on cash flow and between \$732 million and \$1.152 billion based on revenues.

51. The Sale Price of the Health Midwest assets exceeds the range of values determined by Ponder.

52. The Board exercised its valid authority and made a reasonable and informed business decision in the best interests of the Health Midwest Plaintiffs by agreeing to sell the Health Midwest Assets for \$1,125,000,000 and the other consideration provided by the Agreement.

53. The Board has not committed any fraudulent, illegal, or ultra vires acts in determining the appropriate price at which to sell Health Midwest's assets.

WHEREFORE, Health Midwest respectfully requests an Order of this Court declaring that the Sale Price of the Health Midwest assets is reasonable, negotiated by the Board in good faith and within its valid exercise of authority and in the best interests of Health Midwest, as well as such other relief as the Court deems just and proper.

COUNT III
DECLARATORY JUDGMENT
(Reasonable Process)

54. Health Midwest restates and realleges the allegations set forth in Paragraphs 1-53 of the Petition as if restated in the following paragraphs word for word.

55. The Board retained experts, obtained independent appraisal of the Health Midwest Assets, entertained competitive bids and engaged in a thorough and objective review, investigation and evaluation of the bids and bidding entities before reaching the decision to sell the Health Midwest Assets to the Buyer.

56. The process employed by the Board in reaching the decision to sell the Health Midwest Assets to the Buyer was within its valid authority and a reasonable, informed and good faith business decision made in the best interests of the Health Midwest Plaintiffs.

57. The Board has not committed any fraudulent, illegal, or ultra vires acts in determining the appropriateness of the process used to sell its assets.

WHEREFORE, Health Midwest respectfully request an Order of this Court declaring that the Board followed a reasonable and informed process in good faith and within

its valid exercise of authority in reaching the decision to sell the Health Midwest assets to the Buyer, as well as such other relief as the Court deems just and proper.

COUNT IV
DECLARATORY JUDGMENT
(Reasonable Use of Proceeds)

58. Health Midwest restates and realleges the allegations set forth in Paragraphs 1-57 of the Petition as if restated in the following paragraphs word for word.

59. The Agreement does not affect the continued existence of Health Midwest or its commitment to charitable, scientific and educational purposes in the community. These purposes include caring for the sick, carrying on research and teaching, and fostering the health of the community.

60. The Board intends that proceeds from the sale of the Health Midwest Assets will fund charity health care and social welfare programs, community outreach services, medical education, research for the prevention and treatment of disease, nutrition and health management programs and support for emergency medical response and ambulance services in the greater Kansas City Metropolitan area.

61. All of the endeavors described in the preceding paragraph are within the purposes set forth in Health Midwest's Articles of Incorporation, and all are among the purposes which Missouri and Kansas nonprofit corporations are authorized to accomplish.

WHEREFORE, Health Midwest respectfully request an Order of this Court declaring that the intended use of proceeds from the sale of the Health Midwest assets is reasonable, within the purposes set forth in the Health Midwest Articles of Incorporation and

in the best interests of Health Midwest, that the Attorney General has no authority to exercise control over sale proceeds or the entity in which the proceeds are held, as well as such other relief as the Court deems just and proper.

Respectfully submitted,

ROUSE HENDRICKS GERMAN MAY PC

By _____
Charles W. German MO #26534
Lawrence A. Rouse MO #25064
Matthew P. Hamner MO #51075
Ann E. Agnew MO #47250
One Petticoat Lane Building
1010 Walnut, Suite 400
Kansas City, MO 64106
Tele: 816/471-7700
Fax: 816/471-2221

SEIGFREID, BINGHAM, LEVY, SELZER &
GEE P.C.

Paul Schepers MO #32550
Douglas Anning MO #43757
2800 Commerce Tower
911 Main Street
Kansas City, MO 64105
Tele: 816/421-4460
Fax: 816/474-3447

BLITZ, BARDGETT, & DEUTSCH, L.C.

James B. Deutsch, Esq.
308 High Street, Suite 301
Jefferson City, MO 65101

ATTORNEYS FOR PLAINTIFF

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

HEALTH MIDWEST,
a Missouri nonprofit public
benefit corporation,

Plaintiff,

vs.

JEREMIAH W. (JAY) NIXON,
in his official capacity as the
Attorney General for the State of Missouri,

Defendant.

Case No. _____

Court No. _____

**PLAINTIFF'S MOTION FOR EXPEDITED HEARING
AND TO SHORTEN TIME FOR DEFENDANT TO
ANSWER OR OTHERWISE RESPOND**

Pursuant to Mo. R. Civ. P. 55.30(a) and Rule 33.5 of the Rules of the Circuit Court of the Nineteenth Judicial Circuit, plaintiff Health Midwest respectfully requests an Order of this Court: (1) granting an expedited hearing on plaintiff's Petition for Declaratory Judgment; and (2) reducing the Attorney General's time to answer or otherwise respond from thirty days to seven days. In support of its motion, plaintiff states as follows:

1. On November 22, 2002, Health Midwest entered into an Asset Purchase Agreement (the "Agreement") with a subsidiary of HCA, Inc. for the sale of Health Midwest assets for the sale priced of \$1,125,000,000.
2. The Attorney General's attempted exercise of control over the disposition of proceeds from the sale threatens to cause irreparable injury to plaintiff by

denying it the benefit of the bargain under the Agreement. Indeed, the Agreement may be terminated if closing is delayed.

3. The impact for delay associated with the Agreement renders time of the essence, and accordingly, plaintiff respectfully requests an expedited hearing on the Petition for Declaratory Judgment as well as a reduction in the Attorney General's time to answer or otherwise respond.

4. Plaintiff requests this relief in good faith and in the interest of justice, and, if granted, the requested relief will not unfairly prejudice the Attorney General.

WHEREFORE, plaintiff Health Midwest respectfully request an Order of this Court: (1) granting an expedited hearing on Plaintiff's Petition for Declaratory Judgment; and (2) reducing the Attorney General's time to answer or otherwise respond from thirty days to seven days. Plaintiff is submitting a proposed Order with this Motion for the convenience of the Court. Plaintiff is also submitting herewith its Proposed Expedited Scheduling Order pursuant to Rule 33.5 of the Rules of the Circuit Court of the Nineteenth Judicial Circuit.

Respectfully Submitted,

ROUSE HENDRICKS GERMAN MAY PC

By _____
Lawrence A. Rouse MO # 25064
Charles W. German MO # 26534
Matthew P. Hamner MO # 51075
Ann E. Agnew MO # 47250
One Petticoat Lane Building
1010 Walnut Street, Suite 400
Kansas City, MO 64106
(816) 471-7700 (telephone)
(816) 471-2221 (facsimile)

SEIGFREID, BINGHAM, LEVY, SELZER &
GEE P.C.

Paul Schepers MO # 32550
Douglas Anning MO # 43757
2800 Commerce Tower
911 Main Street
Kansas City, MO 64105
Tele: 816/421-4460
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IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

HEALTH MIDWEST,
a Missouri nonprofit public
benefit corporation,

Plaintiff,

vs.

JEREMIAH W. (JAY) NIXON,
in his official capacity as the
Attorney General for the State of Missouri,

Defendant.

Case No. _____

Court No. _____

PLAINTIFF'S PROPOSED EXPEDITED SCHEDULING ORDER

Pursuant to Rule 33.5 of the Rules of the Circuit Court of the Nineteenth Judicial Circuit and for good cause shown, plaintiff Health Midwest hereby submits the following Proposed Expedited Scheduling Order:

1. Defendant shall answer or otherwise respond to plaintiff's Petition for Declaratory Judgment on or before Tuesday, December 3, 2002.
2. The parties shall complete discovery on or before December 13, 2002.
3. Any dispositive motions shall be filed on or before December 16, 2002.
4. A hearing is set on plaintiff's Petition for Declaratory Judgment on

Friday, December 20, 2002 at 9:00 a.m.

IT IS SO ORDERED.

Date: _____

Circuit Court Judge